

1 Vanessa R. Waldref
2 United States Attorney
3 Eastern District of Washington
4 Richard R. Barker
5 Assistant United States Attorney
6 Post Office Box 1494
7 Spokane, WA 99210-1494
8 Telephone: (509) 353-2767

9 UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF WASHINGTON

11 UNITED STATES OF AMERICA,

No. 2:21CR00088-SMJ-1

12 Plaintiff,

UNITED STATES' SENTENCING
MEMORANDUM

13 v.

14 JAMES H. GALLAHER,

15 Defendant.

16 Plaintiff, the United States of America, by and through the United States
17 Attorney for the Eastern District of Washington, Vanessa R. Waldref, and Assistant
18 United States Attorney Richard R. Barker, respectfully submits the following
19 sentencing memorandum. For the reasons stated below, the United States
20 respectfully asks the Court to sentence the Defendant, James H. Gallaher, to a
21 guidelines sentence of forty-one months' imprisonment followed by three years'
22 supervised release.

23 **II. STATEMENT OF FACTS¹**

24 On June 28, 2021, Colville Tribal Police received information from Security
25 personnel at Chief Joseph Dam about a possible weapons offense at the Dam. Tribal
26

27
28 ¹ The statement of facts is drawn from the Parties' plea agreement (*see* ECF
No. 33 § 5) and the Final PSIR (*see* ECF Nos. 43, ¶¶ 9-20).

1 police learned that Defendant James Gallaher was at the Dam's lower spillway
2 parking area in a camper. Security personnel further explained that Gallaher was
3 observed moving a pistol and AR style rifle from the camper to a white Honda.
4 Surveillance video from the Dam further showed Gallaher carrying what appeared
5 to be a pistol and an AR style rifle.

6 The next day, Tribal Police traveled to Chief Joseph Dam and observed the
7 firearms inside a white Honda sedan in plain view. Tribal Police then approached
8 the front door of the camper, which was open. Gallaher was inside along with two
9 other people. Ultimately, Tribal Police procured search warrants for the camper and
10 the Honda sedan. During the execution of the search warrants, ATF and Tribal Police
11 recovered, among other things, the following firearms:

- 12 - a Ruger, model Single Six, .22LR caliber revolver, bearing serial number
13 368026;
- 14 - a Smith & Wesson, model M&P 15-22, .22LR caliber rifle, bearing serial
15 number DWP8467;
- 16 - a Winchester, model 70, .264 Winchester Magnum caliber rifle, bearing
17 serial number 721650; and
- 18 - a Remington Model 700, 7mm STW caliber rifle, bearing serial number
19 S6441319

20 The revolver and the .22LR caliber rifle were consistent with the firearms that
21 Gallaher was seen carrying on surveillance video the day before. As discussed in
22 greater detail below, at the time Gallaher possessed these guns, he knew he had a
23 number of prior convictions for which the maximum penalty was greater than one
24 year.

25 On October 12, 2021, Gallaher entered a guilty plea to the charges of Felon in
26 Possession of a Firearm. While Gallaher initially was prepared to enter into a plea
27
28

1 without an agreement, the parties finalized a plea agreement that same day, and
2 Gallaher entered into his plea.

3 **III. SENTENCING CALCULATIONS**

4 Based on a total offense level of 19, a criminal history score of 3, and a
5 criminal history category of II, the government agrees with the United States
6 Probation Office that the advisory guideline range applicable to Defendant's case is
7 33-41 months' imprisonment. ECF No. 43 at ¶ 173.

8 **IV. SENTENCING FACTORS UNDER 18 U.S.C. § 3553(a)**

9 In determining the appropriate sentence, this Court should consider the factors
10 set forth in 18 U.S.C. § 3553(a). Based on these factors, including Gallaher's violent
11 criminal history, the United States requests a sentence of 41 months' imprisonment,
12 3 years' supervised release, and a \$100 special penalty assessment.

13 **A. The nature and circumstances of the offense and the history and** 14 **characteristics of the defendant**

15 The nature and circumstances of the offense, as described in the factual
16 statement above coupled with Gallaher's criminal history spanning several decades,
17 demonstrate that a sentence of 41 months is appropriate. Gallaher has several felony
18 convictions, including four separate felonies in federal court. Notwithstanding his
19 status as a felon, Gallaher again possessed multiple firearms in June 2021. He was
20 bold and brazen in his possession – carrying the guns in broad daylight to his car in
21 a parking lot that was surveilled by video.²

22
23 ² Gallaher states to the PSIR writer that he had the firearms because of their
24 sentimental value and did not intend to keep them. ECF No. 43 at ¶ 20. The United
25 States has not been able to verify this claim, but it should make little difference for
26 purposes of sentencing. Gallaher has a number of felony convictions, each one
27 precluding him from having firearms. Yet, he had 4 firearms in October 2021. In
28 addition, his claim appears to be inconsistent with his messages in his Facebook
account about obtaining a firearm:

Although Defendant's criminal history score is relatively low, he not stranger to the criminal justice system, and his prior criminal convictions are concerning. These convictions range from firearms offenses, assault, and homicide to sexual abuse. These prior offenses include, but are not limited to, the following:

- Firearms/Deadly Weapon Violation – February 7, 1977;
- Simple Assault – April 10, 1977, for kicking and punching his victim and inflicting bodily harm;
- Second Degree Robbery – April 11, 1978, for taking money from his victim by threatening the use of force, violence, and fear of injury;
- First Degree Reckless Burning – May 2, 1978, for starting a fire in his jail cell;
- Second Degree Assault – January 17, 1985, for assaulting his victim outside a bar with an open folding knife and cutting his victim's face and hand;

Author James Gallaher (Facebook: 100049138112744)

Sent

2020-06-04 12:14:32 UTC

Body I need a gun

Author Maddesyn Danielle (Facebook: 100001955054315)

Sent 2020-06-04 12:14:45 UTC

Body Okay well what kind

Author James Gallaher (Facebook: 100049138112744)

Sent 2020-06-04 12:15:17 UTC

Body Something ain't got alotta ppl having my back ya know

See Bates 30000007 at 3783. In July 2020, Gallaher sent additional messages about firearms:

Author James Gallaher (Facebook: 100049138112744)

Sent 2020-07-01 08:07:56 UTC

Body Hey beautiful know anyone with a deer gun yru

Author James Gallaher (Facebook: 100049138112744)

Sent 2020-07-01 11:52:03 UTC

Body I had to sell gun I need to get my bag of close out of that fucking van

Id. at 3452, 3737.

- December 6, 1987 – May 16, 1988, for assaulting his victim at a bar and then damaging a police vehicle after arrest;
- Theft of Government Property – May 26, 1991, for stealing salmon from a National Fish Hatchery, which was working to restore salmon runs in the Columbia River for the Confederated Tribes of the Colville Reservation;
- Abusive Sexual Contact – July 6, 1992, for the offense described in greater detail in paragraph 82 of the PSIR;
- Felon in Possession of Ammunition – June 21, 1999, for possessing ammunition shortly after an altercation in which Gallaher violently assaulted his victims, causing a torn ear, broken nose, and unconsciousness; and
- Involuntary Manslaughter – April 28, 2009, for breaking his victim’s neck, killing the victim, disposing the victim’s body, and instructing others to never speak about the incident.

ECF No. 43, ¶¶ 41 – 103. As Gallaher acquired this lengthy history, he repeatedly violated his parole and supervised release.

To be sure, Gallaher’s life has not been easy. As a child, he was a victim and witness to domestic abuse in the home. ECF No. 43 at ¶ 123. He has poor health and abuses drugs. These challenges, while tragic in their own right, do not excuse his decisions to repeatedly engage in criminal behavior. In their totality, the nature of this offense and Gallaher’s characteristics necessitate a sentence at the high end of the guidelines range.

B. The need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment

The offense is serious. It involved a Gallaher’s apparent refusal to comport himself with the law, even though he has a conviction for similar conduct – unlawful possession of ammunition to go along with his other serious violent convictions. At the time of his possession, Gallaher was also abusing illegal narcotics, increasing the

1 risk that someone could have been hurt by Gallaher's possession of multiple firearms
 2 in Summer 2021. Gallaher's brazen and repeated possession of firearms underscores
 3 the great need for the sentence to reflect the seriousness of the offense and provide
 4 just punishment. That Gallaher has a number of violent convictions spanning several
 5 decades and dating back nearly fifty years further demonstrates a sentence toward
 6 the top of the guideline range is necessary.

7 **C. The need for the sentence imposed to afford adequate deterrence to**
 8 **criminal conduct and protect the public**

9 A sentence at the high end of the guideline range is necessary to deter
 10 individuals who repeatedly commit violent offenses from possessing firearms. This
 11 is especially true for Gallaher, whose many convictions and the lengthy punishments
 12 imposed have not successfully deterred him from further criminal conduct.

13 **D. The need to avoid unwarranted sentence disparities among defendants**
 14 **with similar records who have been found guilty of similar conduct**

15 The best way to ensure consistent sentences for similarly situated defendants
 16 across courtrooms, districts, and the country is for courts to apply the Guidelines in
 17 the same manner everywhere. *See United States v. Saeteurn*, 504 F.3d 1175, 1181
 18 (9th Cir. 2007); *United States v. Parker*, 462 F.3d 273, 277 (3d Cir. 2006); *United*
 19 *States v. Buscaino*, 437 F.3d 634, 638 (7th Cir. 2006). But diminishing sentencing
 20 disparities “depends . . . upon judicial efforts to determine, and to base punishment
 21 upon, the *real conduct* that underlies the crime of conviction.” *United States v.*
 22 *Booker*, 543 U.S. 220, 250 (2005). “That determination is particularly important in
 23 the federal system where [some] crimes . . . can encompass a vast range of very
 24 different kinds of underlying conduct.” *Id.* at 250–51.

25 Based on the facts of this case and the seriousness of Defendant's conduct, a
 26 high-guidelines sentence of 41 months' incarceration is appropriate and avoids
 27 sentencing disparities. It bears repeating that Gallaher has convictions for
 28

1 manslaughter, sexual assault, physical assault, robbery, and firearms offenses.
2 While several of these convictions are quite old, Gallaher's offense and record
3 warrant a sentence on the higher end of the guidelines to avoid disparities with other
4 defendants with convictions for similar offenses.

5 **V. SENTENCING RECOMMENDATION**

6 The United States recommends the Court sentence James H. Gallaher to 41
7 months' imprisonment, to be followed by 3 years' supervised release. Such a
8 sentence adequately captures the nature and severity of Defendant's offense conduct,
9 as well as his criminal history and acceptance of responsibility.

10
11 DATED this 31st day of January 2022.

12
13 Respectfully submitted,

14 Vanessa R. Waldref
15 United States Attorney

16 s/ Richard R. Barker

17 Richard R. Barker
18 Assistant United States Attorney

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21 I hereby certify that on January 31, 2022, I electronically filed the foregoing
22 with the Clerk of the Court using the CM/ECF System, which will send notification
23 of such filing counsel of record.

24 s/ Richard R. Barker

25 Richard R. Barker
26 Assistant United States Attorney
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